IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.
L.P.A.No. 276/2007 in
Writ Petition No.6207/2006
(Santosh Shaligram Jaiswal .vs. Divisional Commissioner & Ors)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders.

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Mr. H.D. Dangre, Advocate for the Petitioner.
Mr. N.W. Sambre, Government Pleader for Respondents 1,2 & 5.
Mr. D.R. Bhoyar, Advocate for Respondent No.6. .....

CORAM : K.J. ROHEE, &
R.C. CHAVAN, JJ
DATED : NOVEMBER 22, 2007

1. Heard counsel for the parties.

2. The appellant/petitioner was elected as Member of Gram Panchayat Kawatha, tahsil Deoli, district Wardha in the election held in June,2005. His election was challenged by respondents no.3 and 6 under Section 16 read with Section 14 (h) of the Bombay Village Panchayat Act, 1958 on the ground that the appellant was disqualified being defaulter in payment of

Gram Panchayat taxes. The said petition was dismissed by the Additional Collector (Respondent No.2). However, the Divisional Commissioner (Respondent no.1) set aside the order of the Additional Collector. The appellant, therefore, approached the High Court by way of writ petition. The learned Single Judge confirmed the order of the Divisional Commissioner. Hence this L.P.A.

3. From the facts of the case and the documents on record it is an admitted position that a cattle shed was constructed in the agricultural land belonging to Nandlal Sitaram Jaiswal (the uncle of the appellant) and that the petitioner was keeping and tying his goats in the said cattle shed with the permission of his uncle for a couple of years. In the Assessment List of 2000-2001, the said cattle shed was assessed to Gram Panchayat taxes in the name of the appellant. It is, therefore, alleged that the appellant failed to pay the taxes and thus was a defaulter.

4. It may be presumed that the assessment list for the year 2000-2001 must have been prepared after following due procedure given in Rules 9 to 11 of the Maharashtra Village Panchayat Taxes and

Fees Rules,1960 and the appellant must have had an opportunity to see the assessment list. It is pertinent to note that at that time neither the appellant nor his uncle raised any objection to the said assessment list. It was only in the year 2007 that the uncle of the appellant gave an application for correction of the record which was done by the Gram Panchayat for the Assessment Year 2006-2007. The fact remains that in the assessment list for the year 2000-2001 the appellant was shown as occupier of the said cattle shed and was liable to pay the taxes assessed thereon. It may be noted that under Rule 18 of those Rules, the tax is to be leviable primarily on the actual occupier. It was alleged by the learned counsel for the appellant that the appellant does not fit in any of four categories (a to d) mentioned in Rule 18 and as such he was not liable to pay the Gram Panchayat taxes. However, we cannot ignore the definition of “occupier” given in Rule 6 (b) to the effect that an occupier includes a person in actual possession of a building or land whether as an owner , **agent** or tenant. It may be noted that the appellant fits in the definition

of “occupier” as he can be regarded as agent of the owner namely his uncle. Thus there appears no illegality in the order of the Divisional Commissioner or the learned Single Judge. We see no substance in the L.P.A. The same is, therefore, dismissed.

JUDGE **JUDGE**

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